


SCHLANGER LAW GROUP LLP

VIA ECF

Hon. Judith C. McCarthy
United States District Court S.D.N.Y.
300 Quarropas St.
White Plains, NY 10601-4150

SO ORDERED:

Defendants are directed to respond to this letter by February 12, 2020. Thereafter, the Court will hold a conference on February 19, 2020 at 10:00 a.m. in Courtroom 421. The parties are further directed to meet and confer regarding the issues raised in this letter prior to the next conference.

 2-7-2020
JUDITH C. MCCARTHY
United States Magistrate Judge

Re: *Levy v. Law Offices of J. Henry Nierman*
Index: 17-cv-4022 (NSR)(JCM)

Your Honor:

My firm is counsel to Plaintiff in the above-referenced action. Pursuant to Part 1(A) of Your Honor's Individual Practices in Civil Cases, Local Civil Rule 37.2 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, Rule 37 of the Federal Rules of Civil Procedure, and the Order governing discovery disputes in this case (Docket Entry No. 51), we write to request a pre-motion conference, an order compelling Defendants to respond to Plaintiff's discovery requests and provide their Fed. R. Civ. P. 26(a) initial disclosures, and sanctioning Defendants for failing to cooperate in discovery in this matter.

Following the disposition of Plaintiff's motion for default judgment against Defendants (Docket Entry No. 43), Plaintiff issued discovery demands to each of the Defendants on July 1, 2019 (attached as Exhibits 1, 2 and 3, respectively). The discovery demands included interrogatories, requests for the production of documents, and requests for admission.

Following e-mails exchanged between Plaintiff's counsel, *pro se* Defendant J. Henry Nierman, and counsel for Defendants Law Office of J. Henry Nierman and Recovery of Judgment LLC (*see* Exhibit 4), the parties held a Fed. R. Civ. P. 26(f) conference on August 1, 2019. During the approximately 45-minute conference, *pro se* Defendant J. Henry Nierman and counsel for Defendants Law Office of J. Henry Nierman and Recovery of Judgment LLC agreed to respond to Plaintiff's pending discovery demands within the next several weeks, accommodating for Mr.

Nierman's purported upcoming wedding. However, to date, Plaintiff has received no responses despite Defendants' acknowledgement of receipt (at the parties Fed. R. Civ. P. 26(f) Conference on August 1, 2019) and Defendants' agreement to provide responses promptly in Summer 2019.

At the Rule 26(f) conference, Defendants also agreed to a presumptive case schedule. On August 6, 2019, Plaintiff distributed the proposed Rule 26(f) discovery plan to Defendants, requested revisions from Defendants, and sought consent to file the discovery plan as a joint submission (*see* Exhibit 5). However, Plaintiff's counsel received no response from Defendants.

On December 12, 2019, Plaintiff contacted the Court and requested an Initial Scheduling Conference (*see* Exhibit 6). On January 13, 2020, the Court issued an Order directing the parties to complete a Case Management Plan and Scheduling Order and to reach out to Your Honor within seven (7) business days after the Court issued an Order of Reference (Docket Entry No. 48). Despite Plaintiff's attempts to coordinate with Defendants (*see* Exhibit 7), Plaintiff again received no response. On January 24, 2020, Plaintiff contacted the Court and provided a proposed case management plan based upon Judge Román's model case schedule and the parties' prior Rule 26(f) discovery plan (*see* Exhibit 8). On January 28, 2020, the Court adopted Plaintiff's submission (Docket Entry No. 50) and issued an Order of Reference to a Magistrate Judge (Docket Entry No. 49) that, *inter alia*, referred the matter to Your Honor for general pre-trial purposes.

On January 29, 2020, Plaintiff again contacted Defendants and requested to meet and confer regarding the outstanding discovery (*see* Exhibit 9). Plaintiff again received no response.

Accordingly, Plaintiff now requests that the Court order a pre-motion conference, compel Defendants to respond to the long overdue discovery in this matter, and sanction Defendants for their consistent failures to cooperate in discovery in this matter. We thank Your Honor for consideration of this application.